

EXHIBIT 031

REPORTER'S RECORD
VOLUME 22 OF 30 VOLUMES
TRIAL COURT CAUSE NO. 1073163

COURT OF CRIMINAL APPEALS NO. AP-75,633

STATE OF TEXAS) IN THE DISTRICT COURT
V.) OF HARRIS COUNTY, TEXAS
HOWARD PAUL GUIDRY) 230TH JUDICIAL DISTRICT

TRIAL ON THE MERITS

On the 21st day of February, 2007, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable Doug Shaver, Judge Presiding, held in Houston, Harris County, Texas.

Proceedings reported by computerized stenotype machine.

GINA BENCH
DEPUTY OFFICIAL COURT REPORTER
230TH DISTRICT COURT
HARRIS COUNTY, TEXAS

1 THE JURY: Good morning.

2 THE COURT: Ms. Siegler.

3 SCOTT F. BASINGER, Ph.D.

4 having been first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MS. SIEGLER:

7 Q Sir, could you tell us all your name, please?

8 A My name is Scott Basinger, B-a-s-i-n-g-e-r.

9 Q And what do you do for a living?

10 A I'm the associate dean at Baylor College of
11 Medicine.

12 Q Can you give the jury the benefit of your
13 educational training and your background?

14 A I have a Ph.D. in molecular biology. I have
15 expertise in the molecular biology of the nervous system
16 in the brain. I have also been trained in human
17 behavior. I work in the field of addiction and
18 addiction medicine.

19 Q And as part of your training and as part of
20 your job, are you also called upon to be an expert
21 witness in those areas and to testify in that regard?

22 A I am.

23 Q You have been before in the past?

24 A I have been.

25 Q As a matter of fact, Dr. Basinger, are you here

1 today because you've been subpoenaed to be here today?

2 A I am.

3 Q And that's the only reason you're here?

4 A Correct.

5 Q As someone who's testified previously in other
6 cases in other trials -- you've done that, have you not,
7 sir?

8 A I have, yes.

9 Q And because you've testified before, you're
10 familiar with the way the rules work in the courtroom,
11 the rules of evidence, that sort of thing?

12 A Somewhat, yes.

13 Q And as an expert witness, you appreciate that
14 when you're called down to testify as an expert by one
15 side, the other side has a right to ask you questions?

16 A I am.

17 Q And that's called cross-examination?

18 A Correct.

19 Q And you are familiar with the phrase that in
20 Texas under our rules, cross-examination is what's
21 called wide open cross-examination?

22 A I wasn't familiar with that, but --

23 Q Now you are?

24 A I am now.

25 Q And you understand that that means when one

1 side calls you about a certain subject, the other side
2 has a right to ask you about everything. There's no
3 limit on the cross-examination?

4 A Apparently that's true.

5 Q And you also understand as a doctor, as a
6 Ph.D., that when you're called to testify as an expert
7 for either side, one side or the other, any privilege
8 that you have as an expert with that attorney is waived
9 once you hit the witness stand?

10 MS. MULDROW: That's a misstatement of
11 the law. It's depending upon the circumstances.

12 THE COURT: That will be sustained.

13 Q (By Ms. Siegler) Do you understand the
14 difference, Dr. Basinger, between a consulting expert
15 only and a testifying expert?

16 A I do not.

17 Q Dr. Basinger, are you a proponent or an
18 opponent of the death penalty?

19 MS. MULDROW: That's irrelevant, Your
20 Honor.

21 THE COURT: That's sustained.

22 Q (By Ms. Siegler) Were you called upon, sir,
23 back in 1997 to interview Howard Paul Guidry, the
24 defendant in this case?

25 A I was.

1 Q And do you recognize Mr. Guidry in the
2 courtroom today?

3 A I do.

4 Q Back in 1997 were you called to interview
5 Howard Paul Guidry by Howard Paul Guidry's lawyers?

6 A Yes.

7 Q Not by the State?

8 A Correct.

9 Q And did you interview him?

10 A I did.

11 Q On one occasion?

12 A On one occasion.

13 Q And as a result of that interview, were you
14 later called to court to testify as a defense expert
15 witness?

16 A I was.

17 Q And was that back in 1997?

18 A Yes.

19 Q Obviously Howard Guidry's lawyers asked you
20 questions back in 1997?

21 A They did.

22 Q And then you were passed to the prosecutors?

23 A I was.

24 Q And in that case you were passed to be asked
25 questions of by me, were you not?

1 A That is correct.

2 Q And I'm the one who asked you the questions
3 back in 1997?

4 A Yes.

5 Q Do you recall back in 1997, Dr. Basinger, that
6 I asked you whether or not you ever asked Howard Paul
7 Guidry if he told you he shot Farah Fratta two times in
8 the head?

9 A I remember you asking me that, yes.

10 Q And did you answer my question back then?

11 A I did.

12 Q And what was your answer to that question back
13 then?

14 MS. MULDROW: Same objections as
15 previously lodged before, Your Honor.

16 THE COURT: That's overruled. The
17 Court's ruling will remain the same.

18 MS. MULDROW: And ask for a running
19 objection.

20 THE COURT: You have it.

21 A To be specific, I never asked Howard Paul
22 Guidry if he had shot --

23 MS. MULDROW: Nonresponsive, Your Honor.

24 THE COURT: That's sustained.

25 Q (By Ms. Siegler) Did you answer my question --

1 how did you answer my question back in 1997 when I asked
2 you did Howard Paul Guidry ever tell you that he shot
3 Farah Fratta two times in the head? What did you answer
4 back then?

5 A I answered in the affirmative.

6 Q You said he did, did you not?

7 A I said he did.

8 Q And then traveling forward in time to back in
9 July of last year, July of 2006 --

10 MS. MULDROW: And, Your Honor, I'm going
11 to object to the substance of anything regarding a
12 matter that was not before this jury. It's strictly a
13 legal issue being brought at this time.

14 THE COURT: That's overruled.

15 Q (By Ms. Siegler) Do you recall my asking you in
16 July of 2006 whether or not Howard Paul Guidry told you
17 he shot Farah Fratta two times in the head and you heard
18 that out of the mouth of Howard Guidry?

19 A Yes.

20 Q And what did you say?

21 A Yes.

22 Q As an expert witness called down to testify in
23 court, Dr. Basinger, do you appreciate that when lawyers
24 decide to put you on the stand, they make those
25 decisions, weighing the points they hope to make versus

1 the points that might hurt them depending on
2 cross-examination?

3 A I agree.

4 MS. MULDROW: Speculation, Your Honor.

5 THE COURT: That's overruled.

6 A I appreciate that.

7 Q (By Ms. Siegler) You know that's the way it
8 works?

9 A I know that's the way it works.

10 Q Every single time we put a witness on the stand
11 we cross our fingers and hope for the good points and
12 hope the bad points don't hurt us.

13 A I imagine that's true.

14 MS. SIEGLER: Pass the witness.

15 THE COURT: Cross-examine?

16 MS. MULDROW: No questions, Your Honor.

17 THE COURT: Is he free to go?

18 MS. SIEGLER: Yes, he is.

19 MS. MULDROW: Yes.

20 THE COURT: You're free to go. Thank
21 you, Doctor.

22 Call your next.

23 MS. SIEGLER: The State calls Nyandre
24 Perry.

25 And Deputy Resendez, he's going to be in

1 the back.

2 MS. MULDROW: May we approach, Your
3 Honor?

4 THE COURT: Yes.

5 *(At the Bench)*

6 MS. MULDROW: Judge, just so the record
7 is clear, Mr. Perry was a witness in the punishment
8 phase of the prior trial regarding extraneous under
9 404(b) and I just want a proffer from the State of the
10 purpose of this particular witness at this phase of the
11 case.

12 THE COURT: What is he going to testify
13 to?

14 MS. SIEGLER: First of all, Judge, he
15 understands fully he's not to talk about punishment
16 evidence, the bank robbery, any other robberies, the
17 fact they were smoking dope together all the time, and
18 all the other crimes he committed. His purpose for
19 being called today is to tell the jury that Howard
20 Guidry gave him the murder weapon back in '94, November
21 of 1994. So he can put the murder weapon in the hands
22 of Guidry well before the four months --

23 THE COURT: Your objection is overruled.
24 On that limited purpose.

25 *(Open court.)*

1

2

3

THE COURT: Do you want to raise your
right hand for us?

4

(Witness sworn.)

5

NYANDRE PERRY,

6

having been first duly sworn, testified as follows:

7

DIRECT EXAMINATION

8

BY MS. SIEGLER:

9

Q Sir, could you tell us all your name, please?

10

A Nyandre Xavier Perry.

11

Q What first name do you go by?

12

A Dre.

13

Q Your last name is Perry?

14

A Yes, ma'am.

15

Q Mr. Perry, tell the jury how old you are.

16

A 33.

17

Q And tell the jury why it is you're wearing an

18

orange jumpsuit.

19

A Bench warranted from TDC for Guidry trial.

20

Q Okay. And you're currently being incarcerated

21

in the Harris County Jail, are you not?

22

A Yes, ma'am.

23

Q What's your birth date?

24

A 9-1-73.

25

Q Where did you grow up?

1 TDC?

2 A Yeah, \$100.

3 Q So they give guys that are let out of TDC,
4 discharged, \$100?

5 A Yes, ma'am.

6 Q Every time they're let out?

7 A Yes, ma'am.

8 Q Because you're going to be discharged out of
9 the county jail and not TDC due to my bench warrant,
10 what have I promised you I would do?

11 A That I be reimbursed, compensated for my \$100
12 from the State.

13 Q Instead of the TDC \$100 that you can't get
14 because I brought you here, I'm going to give you a 100
15 dollars?

16 A Right.

17 Q Is that right?

18 A Right.

19 Q Okay. So a grand total, altogether money,
20 we're talking about how much?

21 A 600.

22 Q Other than the way your discharge works, that I
23 had nothing to do with, and this commissary money and
24 TDC discharge money, are there any other agreements,
25 deals or understandings between you and me?

1 MS. MULDROW: And currently unreliable
2 from a codefendant and an ag robbery -- two agg
3 robberies I believe, in which they were arrested in in
4 March of '95 with every reason in the world to, I guess,
5 enhance whatever it is he's trying to get from the State
6 today.

7 THE COURT: Well, the jury can determine
8 his credibility. That's what their job is. Your
9 objection is overruled. You will have a running
10 objection.

11 Bring me a jury, please.

12 Did we swear you in when you came out?
13 Do you want to raise your hand?

14 *(Witness sworn.)*

15 THE COURT: Put your hand down. Listen
16 to the questions and answer just their questions. And
17 lean in the microphone where we can hear you.

18 *(Jury present.)*

19 THE COURT: Everyone be seated, please.

20 Ms. Siegler.

21 **KENNO HENDERSON,**
22 having been first duly sworn, testified as follows:

23 **DIRECT EXAMINATION**

24 BY MS. SIEGLER:

25 Q Sir, could you tell us all your name, please?

1 in front of the jury, everybody is under oath, right?

2 A Yes, ma'am.

3 Q And I told you that there would be a lady
4 sitting in front of you -- that's Gina -- taking it all
5 down because she's a court reporter?

6 A Yes, ma'am.

7 Q And did I promise you that when we got through
8 with court today Luci and I would ask Gina to transcribe
9 and put down and print out everything you testify about
10 so you will have a hard copy?

11 A Yes, ma'am.

12 Q Did I make that promise to you?

13 A Yes, you did.

14 Q And by the way, your dad and your step-mom are
15 here today and they're going to give me their address
16 and I'm going to mail them a copy also. Is that part of
17 our deal?

18 A Yes, ma'am.

19 Q And the reason you want that down in writing
20 and the reason I'm going to give your dad a copy in
21 writing is because you want to take the copy of your
22 testimony today and make sure who gets it?

23 MS. MULDROW: And, Your Honor, I object
24 to the unsworn testimony.

25 THE COURT: That's overruled.

1 Q (By Ms. Siegler) Who do you want to make sure
2 gets a copy of this, Mr. Henderson?

3 A Parole Board.

4 Q Okay. Let's talk about that. You have been
5 serving a 25-year sentence since 1996; is that right?

6 A Yes, ma'am.

7 Q When is the first time you have your very first
8 parole board hearing?

9 A 2008.

10 Q What month?

11 A June.

12 Q June of 2008?

13 A Yes, ma'am.

14 Q And when you got sentenced to 25 years, your
15 sentence was for aggravated time, right?

16 A Yes, ma'am.

17 Q Which means you have to serve at least how much
18 of your time, what percent?

19 A Half.

20 Q So 25 divided by 2 is 12-and-a-half?

21 A Yes, ma'am.

22 Q 1996 plus 12-and-a-half gets us to 2008; is
23 that right?

24 A Well, from '95.

25 Q '95, because of you getting credit for all that

1 A Kevin.

2 Q Who was in the front passenger seat?

3 A Nyandre.

4 Q And where were you?

5 A Backseat.

6 Q Whose car were y'all in?

7 A If I'm not mistaken, Kevin's sister's.

8 Q Driving around coming from the gun show that
9 day, did you hear Kevin say something?

10 A He was, like I said, he was talking to Nyandre
11 about some guy owing him a thousand dollars for doing
12 something. He said the guy didn't pay him or something.
13 He said the dude didn't pay me, I do something to him.

14 Q Okay. You said that real fast. Let's back up.

15 A He was talking about some guy owed him some
16 money to Nyandre, a guy owed him some money.

17 Q How much money did Kevin tell Nyandre the guy
18 owed him?

19 A A thousand dollars.

20 Q What did he say about the fact that the man
21 owed him a thousand dollars?

22 A He hadn't got paid yet.

23 Q Had not got paid?

24 A Yes, ma'am.

25 Q And what else did he say?

1 at 10 till. We will continue at 10 minutes to 11:00.

2 (Recess taken)

3 (Jury present.)

4 THE COURT: All right. Everyone be
5 seated, please.

6 Ms. Davidson.

7 MS. DAVIDSON: Thank you, Judge.

8 GLORIA RUBAC,
9 having been previously duly sworn, testified as follows:

10 **DIRECT EXAMINATION**

11 BY MS. DAVIDSON:

12 Q Can you introduce yourself to the ladies and
13 gentlemen of the jury?

14 A My name is Gloria Rubac.

15 Q What do you do for a living, Ms. Rubac?

16 A I teach school.

17 Q Where do you teach?

18 A For Houston ISD.

19 Q In what particular school do you teach?

20 A Oh, Osborne Elementary.

21 Q Where is Osborne Elementary located?

22 A Off of 45 North and Little York.

23 Q How long have you been a teacher?

24 A Twenty-two years.

25 Q Have you always taught for the Houston

1 Independent School District?

2 A All except three years.

3 Q And where did you teach those three years?

4 A North Forest.

5 Q And when was that?

6 A That was right after I got out of college, in
7 the 60's.

8 Q Do you also freelance report for a newspaper by
9 the name of Workers World?

10 A Occasionally.

11 Q Can you tell the jury what Workers World is?

12 A It's a newspaper for working people.

13 Q What kind of articles are in that newspaper?

14 MS. MULDROW: Irrelevant, Your Honor.

15 THE COURT: That's overruled.

16 Go ahead.

17 THE WITNESS: I'm sorry. I didn't hear
18 what you said.

19 THE COURT: You can answer.

20 THE WITNESS: Okay.

21 A Articles that average working people are
22 interested in: Healthcare, criminal justice, housing.

23 Q (By Ms. Davidson) And does Workers World oppose
24 the death penalty?

25 MS. MULDROW: Irrelevant, Your Honor.

1 THE COURT: Overruled.

2 A Yes.

3 Q (By Ms. Davidson) And you do as well?

4 A Yes, I do.

5 Q Have you come to know a person by the name of
6 Howard Paul Guidry?

7 A Uh-huh. Yes.

8 Q Do you see Mr. Guidry in the courtroom today?

9 A Uh-huh, I do.

10 Q Just so the record is clear, this man I'm
11 pointing at right here, is this Howard Paul Guidry?

12 A Yes.

13 Q When was it that you met him?

14 A Oh, sometime in the late 90's, I think.

15 Q And just so everybody is clear, you're only
16 here because you're under subpoena; is that correct?

17 A Uh-huh.

18 Q And I met you for the first time this morning;
19 is that correct?

20 A Yes, ma'am.

21 Q Okay. So you met him in the late 90's; is that
22 what you said?

23 A (Nodding head in the affirmative.)

24 Q And have you visited him in the Harris County
25 Jail?

1 A Yes.

2 Q On few or many occasions?

3 A A dozen or more maybe.

4 Q A dozen or more times?

5 A (Nodding head in the affirmative.)

6 Q Have you written him letters?

7 A Yes.

8 Q On few or many occasions?

9 A Few.

10 Q Have you written articles about him in Workers
11 World?

12 A Yes.

13 Q And have you talked to him on the phone on few
14 or many occasions?

15 A Many.

16 Q And, in fact, you've talked to him since April
17 approximately 170 times, have you not?

18 A Probably.

19 Q Can you tell the jury how it is that you
20 receive a phone call from an inmate in Harris County
21 Jail?

22 A What happens when you receive it?

23 Q Uh-huh.

24 A It's a collect call.

25 Q So you hear an operator say, "You have a

1 collect call from the Harris County Jail"?

2 A It's a recording.

3 Q And does it take any part on your part to
4 accept that call?

5 A Yeah. You have to punch a button.

6 Q Okay. And when Mr. Guidry would call you from
7 the Harris County Jail, would you always accept his
8 phone calls?

9 A Yeah.

10 Q And since they are collect phone calls, you
11 were charged for that, are you not?

12 A I was what?

13 Q Charged?

14 A Oh, yes, ma'am, I was charged.

15 Q And how much does the Harris County Jail charge
16 you for each and every collect phone call?

17 A 3.50 or \$4.

18 Q So for 170 calls, 3.50 to \$4 apiece, how much
19 money do you think you've spent on these phone calls
20 with Mr. Guidry?

21 A In the course of almost a year, maybe 3 or
22 \$400.

23 Q Now, when you accept a phone call, specifically
24 with this defendant, is there a recording at the
25 beginning of the phone call telling you this call could

1 be recorded or monitored?

2 A Yeah, I think they say it's monitored.

3 Q So you can hear that?

4 A Uh-huh.

5 Q And the defendant can hear that?

6 A I don't know what he can hear.

7 Q Well, isn't it a fact in one of the phone calls
8 you even said to him, "Man, do you have to listen to
9 that every single time," and he laughed and said, "Yes"?

10 A Oh, yeah, I think so. Uh-huh. I guess he
11 hears it, too.

12 Q And each call from him was approximately, give
13 or take a few minutes, 20 minutes; is that correct?

14 A I think so, yes.

15 Q So you have spoke to him 170 calls at 20
16 minutes a call? You would agree that's a bunch, would
17 you not?

18 A Yeah.

19 Q And during the course of these phone
20 conversations, Ms. Rubac, did you ask him at some point
21 about any specifics about the facts of his case,
22 specifically about the gun?

23 A Yes.

24 Q You asked him three different times about how
25 he came into contact with that gun, did you not?

1 A I believe so.

2 MS. DAVIDSON: May I approach the
3 witness, Judge?

4 THE COURT: Yes.

5 Q (By Ms. Davidson) Ms. Rubac, I'm going to show
6 you what I've already showed you this morning that I've
7 marked as State's Exhibit No. 181, which is a phone
8 conversation you had with the defendant on May 5th of
9 2006; State's Exhibit 182, which is a phone call you had
10 with the defendant on July 12 of 2006; and State's
11 Exhibit No. 183, which is a phone call you had with the
12 defendant on July 17th of 2006.

13 Did I give you an opportunity to listen
14 to all three of these tapes this morning?

15 A Yes, ma'am.

16 Q And I told you that all three of these tapes
17 were redacted or stuff had been eliminated, that they
18 were just about your conversation about the gun; is that
19 correct?

20 A Correct.

21 Q And on 181, 182 and 183, whose voices are on
22 these tapes?

23 A Myself and Howard.

24 Q So it's you talking to Howard and him
25 responding to questions from you; is that correct?

1 A Yes.

2 Q Okay. And these were fair depictions of that
3 short portions of these conversations, right? You
4 remembered having those conversations?

5 A Yeah.

6 MS. DAVIDSON: Your Honor, at this time I
7 would like to offer into evidence State's Exhibits 181,
8 182, 183 into evidence.

9 MS. MULDROW: Your Honor, the objection I
10 have are the objections I lodged before regarding the
11 readiness of this. We don't have at this point the
12 record, the full record, regarding those phone
13 conversations and we especially don't have anything
14 regarding the May 5th phone conversations. And I'll
15 just read in the record what we do have: The January
16 '07, the November 6th to January 20th, '07, and
17 July 17th through November the 10th of 2006.

18 THE COURT: Is that your objection?

19 MS. MULDROW: Our objection is we simply
20 can't give -- A, the foundation is not laid for it and,
21 B, we can't effectively confront the evidence because we
22 don't have the material.

23 THE COURT: That's overruled. They're
24 admitted.

25 MS. MULDROW: We ask for a running

1 objection.

2 THE COURT: You will have it.

3 MS. DAVIDSON: Your Honor, just so the
4 record is clear, we gave Ms. Muldrow transcripts of what
5 is on these phone conversations and we allowed her an
6 opportunity to listen to them.

7 THE COURT: All right.

8 Q (By Ms. Davidson) Now, Ms. Rubac, you have no
9 knowledge of what happened to Farah Fratta on
10 November 9th of 1994, do you?

11 A No, ma'am.

12 Q Did you attend any prior hearings involving
13 either Robert Fratta, Joe Prystash or this defendant?

14 A No, ma'am.

15 MS. DAVIDSON: I will pass the witness,
16 Judge.

17 THE COURT: Cross-examine.

18 CROSS-EXAMINATION

19 BY MS. MULDROW:

20 Q The conversations you had -- good morning,
21 ma'am.

22 A Good morning.

23 Q The conversations that you had with Mr. Guidry
24 over the course of time from whenever it is you started,
25 was that in April --

1 A April of last year.

2 Q -- of 2006 until -- when did you receive your
3 subpoena?

4 A About a week-and-a-half ago.

5 Q So that would have been in the month of
6 February; is that correct?

7 A Yes, ma'am.

8 Q So if jury selection began on January the 29th,
9 you found out about the audio recordings with respect to
10 the State's subpoena after jury selection began?

11 A Yes, ma'am.

12 Q Okay. The conversations that you had with
13 Mr. Guidry regarding what's contained in whatever was
14 just admitted was with respect to testimony from a prior
15 litigation; is that correct?

16 A I believe so, yes.

17 Q Did you get a chance to read that or discuss
18 that with Ms. Davidson?

19 A I heard the portion of the tape she had cut
20 out, but I didn't read anything.

21 Q Okay. And was that in respect to the testimony
22 regarding the prior litigation?

23 A Yes.

24 Q Was there also discussions about the testimony
25 expected in this trial?

1 A I think one time, yeah.

2 Q Okay. And you've had conversations that total
3 what, 20 minutes each?

4 A Each call, yes.

5 Q And I believe Ms. Davidson mentioned there was
6 at least 127 calls?

7 A I never counted them. Yeah, I guess. A large
8 number.

9 Q A very large number?

10 A Yes, ma'am.

11 Q And in those calls did Mr. Guidry tell you that
12 he committed the act of capital murder?

13 A Oh, no.

14 MS. DAVIDSON: I object. Calls for
15 hearsay, Judge.

16 THE COURT: That's sustained.

17 MS. MULDROW: Pass the witness.

18 THE COURT: Anything else?

19 MS. DAVIDSON: One second, Judge.

20 **REDIRECT EXAMINATION**

21 BY MS. DAVIDSON:

22 Q Ms. Rubac, during some of these phone calls
23 that you had with the defendant, there were occasions
24 that you were typing as he was dictating where you were
25 taking notes for your articles; is that correct?

1 A Uh-huh.

2 Q And you could have turned any of that over to
3 the defense, could you not?

4 A I could have?

5 Q Yes.

6 A I guess so, yeah.

7 Q But you didn't?

8 A No.

9 MS. DAVIDSON: I'll pass the witness,
10 Judge.

11 **RECROSS-EXAMINATION**

12 BY MS. MULDROW:

13 Q So if the defense learned when you learned
14 about these proceedings, these recordings in February of
15 '07, that would have been after jury selection began?

16 MS. DAVIDSON: Object. Asked and
17 answered.

18 Q (By Ms. Muldrow) Is that a yes?

19 A Yes.

20 THE COURT: That's sustained.

21 Don't ask questions again until after
22 I've ruled. Anything else?

23 MS. MULDROW: That's all I have, Judge.

24 THE COURT: You're free to go.

25 Call your next.